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09/970,371	10/02/2001	Noel Tenorio	020431.0917	1757

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* -- ·

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>20 August 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-29</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-29</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

This Office Action is responsive to Applicant's arguments and request for

reconsideration of 09/970,371 (10/02/01) filed on 08/20/07.

Information Disclosure Statement

The information disclosure statement filed 11/28/01 fails to comply with 37 CFR

1.98(a)(2), which requires a legible copy of each cited foreign patent document; each

non-patent literature publication or that portion which caused it to be listed; and all other

information or that portion which caused it to be listed. It has been placed in the

application file, but the information referred to therein has not been considered.

Specifically, copies of the NPL references O and U on the IDS are missing.

Claim Interpretation

The claims have been given their broadest reasonable interpretation in

accordance with MPEP § 2111.

Furthermore, the claims have been analyzed in accordance with MPEP § 2106.

USPTO personnel should begin claim analysis by identifying and evaluating each
claim limitation. For processes, the claim limitations will define steps or acts to
be performed. For products, the claim limitations will define discrete physical
structures or materials. Product claims are claims that are directed to either
machines, manufactures or compositions of matter. MPEP § 2106 II C.

Language that suggests or makes optional but does not require steps to be
performed or does not limit a claim to a particular structure does not limit the
scope of a claim or claim limitation. The following are examples of language that
may raise a question as to the limiting effect of the language in a claim:
(A) statements of intended use or field of use,
(B) "adapted to" or "adapted for" clauses,
(C) "wherein" clauses, or

(D) "whereby" clauses.

MPEP § 2106 II C.

Re Claims 1 and 28:

Thus as described in MPEP § 2106 II C supra, for the system of the claimed

invention the discrete structural elements considered in a determination of patentability

are.

an electronic marketplace operable to/means for receive offer data for a plurality of
offers; and
a market server operable to/ means for generate a display of the received offer data

Re Claims 10 and 19:

Thus as described in MPEP § 2106 II C supra, for the method and software

embodied on computer readable media of the claimed invention the steps or acts to be

performed considered in a determination of patentability are:

receiving offer data for a plurality of offers; and

generating a display of the received offer data.

Re Claims 2-6, 11-15 and 20-24:
Thus as described in MPEP § 2106 II C supra, the dependent

system/method/software embodied on computer readable media claims are not entitled

to patentable weight. The "wherein" clause raises the question as to the limiting effect

of the language in the claim and upon close analysis it is apparent that the respective

claims do not further limit the claim to a particular structure and/or they do not require

steps or acts to be performed.

Re Claims 7:

Thus as described in MPEP § 2106 II C supra, for the system of the claimed

invention the discrete structural elements considered in a determination of patentability

are.

the electronic marketplace is further operable to access a user request; and

the market server is further operable to generate within the display a pattern

representing the user request.

Re Claims 16 and 25:

Thus as described in MPEP § 2106 II C supra, for the method and software

embodied on computer readable media of the claimed invention the steps or acts to be

performed considered in a determination of patentability are:

accessing a user request; and

generating within the display a pattern representing the user request.

Re Claims 8-9,17-18 and 26-27:

Thus as described in MPEP § 2106 II C supra, for the dependent

system/method/software embodied on computer readable media claims the limitations

considered in the determination of patentability are able to:

receive a selection of a particular pattern associated with a particular offer;

receive an instruction to generate an order based on the values for the offer associated

with the selected pattern;

in response to receiving the instruction, automatically generate an order based on the

values for the offer associated with the selected pattern; and

communicate the generated order for matching with the selected offer. (As described in

Claims 8,17 and 26)

and

display the values specified in the user request and the values specified in the user

request and the values specified in the offer associated with the selected pattern to

allow the user to compare these values before providing an instruction to generate an

order. (As described in claims 9,18 and 27.)

Re Claim 29: The is interpreted under the same rationale as applied to claims 1,2 and

7.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out
and distinctly claiming the subject matter which the applicant regards as his
invention.

Claims 1-27 and 29 are rejected under 35 U.S.C. 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

Re Claims 1,10 19 and 29: The claim recites "electronic marketplace" What is

this? Please define. This term is broad and subject many interpretation. Can this be

any online environment?

Dependent claims are rejected based on the same rationale as the claims from

wihich they depend.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed
> or described as set forth in section 102 of this title, if the differences between the
> subject matter sought to be patented and the prior art are such that the subject
> matter as a whole would have been obvious at the time the invention was made
> to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was
> made.

Claims 1-3,5-9,10-12,14-18, 19-21, 23-27,28 and 29 are rejected under 35

U.S.C. 103(a) as being unpatentable over Moshal, US Pat. No. US Pub. No.

2002/0032637.

Re Claims 1-3,5-9,10-12,14-18, 19-21, 23-27,28 and 29:

Moshal discloses an electronic marketplace computer system/method/software

embodied in computer-readable media for providing visualization of market offers, the

system comprising:

market server operable to (Moshal, [0006] [0044] [0045] [0046]):

means for/ receive offer data for a plurality of offers, the received offer data reflecting

values specified in the offers for a plurality of offer variables (Moshal, abstract, [0006]

[0025] [0026] [0027] [0040] [0042] [0044] [0045]); and

means for/ generate a display of the received offer data, the display comprising a

plurality of patterns, each pattern representing a particular offer and particular offer

variables and comprising a set of one or more geometric display elements that by virtue

of their appearance collectively encode, according to a predefined encoding scheme,

values for the offer variables (Moshal, Figs. 1-18; [0006] [0024] [0025] [0026] [0027]

[0029] [0030] [0031] [0033] [0034] [0035] [0039] [0040] [0041] [0044] [0045] plurality

offers (e.g., bid/ask, seller/buyer), plurality of offer variables (e.g., #items, type, user,

price, length of participation etc.)).

Moshal fails to explicitly disclose:

a display of the received offer data, the display comprising a plurality of patterns,

each pattern representing a particular offer and comprising a plurality of bars, each bar

representing a particular offer variable and comprising a set of one or more geometric

display elements that by virtue of their appearance collectively encode, according to a

predefined encoding scheme, a value for the offer variable corresponding to the bar.

Examiner Note: Thus, the only difference between Moshal and the claimed invention

is that the pattern comprises: a plurality of bars, each bar representing a particular offer

variable.

In light of Moshal, the claimed invention would have been obvious based on any

one of the following rationales:

Official Notice

Official Notice is taken that it was old and well-known at the time of the invention

to provide a display of the received offer data, the display comprising a plurality of

patterns, each pattern representing a particular offer and comprising a plurality of bars,

each bar representing a particular offer variable and comprising a set of one or more

geometric display elements that by virtue of their appearance collectively encode,

according to a predefined encoding scheme, a value for the offer variable corresponding

to the bar.

Examiner notes, that the display represents a user interface. It was old and well-known at the time of the invention that a user interface provides for the presentation of information to the users and the capture of their inputs.

Documentary Evidence:

"Microsoft Press Computer Dictionary Third Edition," editor: Kim Fryer. Copyright 1997 by Microsoft Corporation. Pg. 488;

Pearson Education. Copyright 2001 by Addison-Wesley. Pg. 11; and

Free On-line Dictionary of Computing. Copyright 1993-2007 Denis Howe.

Examiner further notes, that it was old and well-known at the time of the invention to manipulate the presentation of the information in a variety of ways in accordance with the preferences of a particular user. These presentations included the use of patterns incorporating bars, columns, grids etc. For example, Excel programs have been used frequently in reports, slide shows and presentations to show diagrams in the form of bars, lines and other visual forms.

Documentary Evidence:

"Mastering Excel 4 For Windows," by Carl Townsend. Copyright 1992 by Sybex. Chapter 20, pgs. 423-454.;

Levine, US Pub. No. 2002/0178105 - Fig. 6 ;

Lee, US Pub. No. 2002/0065762 - Figs. 5-14; [0030] [0056]; and

Russell, US Pat. No. 7,020,630 - Fig. 8

See also MPEP § 2144.03.

Design Choice

Design choice is a **conclusion** reached by the Examiner regarding the difference between the claims and the prior art. This conclusion is based on a two prong test involving an analysis of **the totality of the record** including applicants own specification, and an analysis of whether the prior art would **perform equally as well** as the claimed subject matter.

A rejection based on design choice does not require that a reference expressly or even impliedly teach the difference between the claims and the prior art.

> Applicant provides the following in the Specification:
>
> Business transactions are increasingly taking place over the Internet and other electronic communication networks. Electronic markets may provide a forum for such transactions, allowing buyers to locate sellers, and vice versa. This process may involve a buyer (or seller) identifying one or more suitable offers to sell (or buy) from one or more sellers (or buyers). **However, it may be difficult for a buyer (or seller) to identify suitable offers to sell (or buy) from among the offers available to the buyer (or seller) for a number of reasons.** For example, there may be a relatively large amount of information for a buyer (or seller) to consider when trying to identify suitable offers to sell. The market may include a relatively large number of offers. Offers may include a number of variables, and there may be a relatively large number of possible values for each variable. **Additionally, there may be no available offers providing a substantial match with a particular order from the buyer (or seller). The buyer (or seller) may therefore have to determine which of the available offers provide a relatively close match with that order, taking into account a number of offer variables and possibly the relative priorities of such variables.**
>
> Applicant' Specification, pg. 2 (10/02/01).

What is not made apparent from the record however, is how the particular visual patterns of the claimed invention resolves any problem, provides any advantage or is used for any purpose above and beyond what the visual patterns of the prior art can do equally well.

The visual patterns of Moshal perform equally well at identifying suitable offers to

sell (or buy) for the offers available to the buyer (or seller); and enabling the buyer (or

seller) to discern which offers prove the closest match to a particular order. That is,

factors such as whether it is a offer, user request or order is distinguished; the price; the

size; whether a user is a buyer or seller, the length of time a user has been in the

marketplace; whether orders and offers are close to a match or consummating a

transaction etc. are readily apparent from the visual pattern of Moshal. See Moshal,

abstract, Figs. 1-18; [0001] – [0047]).

Examiner notes, whether presented as circles, bars, stars or any other visual

pattern, the same problem could be resolved, the same advantage achieved, and

purpose addressed. The fact that Applicant provides a pattern comprising a plurality of

bars, each bar representing a particular offer variable is not the basis for a patentability

determination. If that were the case, an infinite number of patents could be issued

representing the offer and the offer variables as lines, or arrows or any other symbol

and none would be any less obvious in light of Moshal.

See also In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975)

Nonfunctional Descriptive Material

> Certain types of descriptive material, such as music, literature, art, photographs,
> and mere arrangements or compilations of facts or data, without any functional
> interrelationship is not a process, machine, manufacture, or composition of
> matter. See MPEP § 2106.01.

Examiner notes that "a display of the received offer data, the display comprising

a plurality of patterns, each pattern representing a particular offer and comprising a

plurality of bars, each bar representing a particular offer variable and comprising a set of

one or more geometric display elements that by virtue of their appearance collectively

encode, according to a predefined encoding scheme, a value for the offer variable

corresponding to the bar" is interpreted as a compilation or mere arrangement of data.

The visual pattern of the data does not provide a functional interrelationship, and is

considered to be non-functional descriptive material and not entitled to patentable

weight.

See also In re Gulack, 217 USPQ 401 (Fed. Cir. 1983).

Thus, based on any of the above rationales, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to modify the teachings of

Moshal to provide a an electronic marketplace computer system/method/software

embodied in computer-readable media for providing visualization of market offers

further comprising: a display of the received offer data, the display comprising a

plurality of patterns, each pattern representing a particular offer and comprising a

plurality of bars, each bar representing a particular offer variable and comprising a set of

one or more geometric display elements that by virtue of their appearance collectively

encode, according to a predefined encoding scheme, a value for the offer variable

corresponding to the bar

As suggested by Moshal, users should have access to an easily understandable

version of a the current state of critical data and any objects other than circles could be

used to represent the buyers and sellers (and inherently, there respective offers also).

(Moshal, abstract, [0003] [0006] [0027]).

Re Claims 7,16 and 25: Moshal discloses a system/method/software, comprising:

wherein the market server is further operable to (Moshal, [0006] [0044] [0045] [0046]):

means for/ access a user request, the user request comprising a plurality of entered values for a plurality of offer variables (Moshal, abstract; [0006] [0025] [0026] [0027] [0040] [0042] [0044] [0045]); and

means for/ generate within the display a pattern representing the user request, the pattern for the user request comprising particular offer variables and comprising a set of one or more geometric display elements that by virtue of their appearance collectively encode, according to the predefined scheme, entered values for the offer variables (Moshal, Figs. 1-18; [0006] [0024] [0025] [0026] [0027] [0029] [0030] [0031] [0033] [0034] [0035] [0039] [0040] [0041] [0044] [0045] (e.g., bid/ask, seller/buyer).

Moshal fails to explicitly disclose:

generate within the display a pattern representing the user request, the pattern for the user request comprising a plurality of bars, each bar representing a particular offer variable and comprising a set of one or more geometric display elements that by virtue of their appearance collectively encode, according to the predefined encoding scheme, an entered value for the offer variable corresponding to the bar.

Examiner Note: Thus, the only difference between Moshal and the claimed invention is that the pattern comprises: a plurality of bars, each bar representing a particular offer variable.

In light of Moshal, the claimed invention would have been obvious based on any one of the following rationales:

Official Notice

Official Notice is taken that it was old and well-known at the time of the invention to "generate within the display a pattern representing the user request, the pattern for the user request comprising a plurality of bars, each bar representing a particular offer variable and comprising a set of one or more geometric display elements that by virtue of their appearance collectively encode, according to the predefined encoding scheme, an entered value for the offer variable corresponding to the bar."

Examiner notes, that the display represents a user interface. It was old and well-known at the time of the invention that a user interface provides for the presentation of information to the users and the capture of their inputs.

Documentary Evidence:

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Pearson Education. Copyright 2001 by Addison-Wesley. Pg. 11; and

Free On-line Dictionary of Computing. Copyright 1993-2007 Denis Howe.

Examiner further notes, that it was old and well-known at the time of the invention to manipulate the presentation of the information in a variety of ways in accordance with the preferences of a particular user. These presentations included the use of patterns incorporating bars, columns, grids etc. For example, Excel programs have been used

frequently in reports, slide shows and presentations to show diagrams in the form of

bars, lines and other visual forms.

Documentary Evidence:

"Mastering Excel 4 For Windows," by Carl Townsend. Copyright 1992 by Sybex.

Chapter 20, pgs. 423-454.;

Levine, US Pub. No. 2002/0178105 - Fig. 6 ;

Lee, US Pub. No. 2002/0065762 - Figs. 5-14; [0030] [0056]; and

Russell, US Pat. No. 7,020,630 - Fig. 8

        See also MPEP § 2144.03.

Design Choice

        Design choice is a *conclusion* reached by the Examiner regarding the difference

between the claims and the prior art. This conclusion is based on a two prong test

involving an analysis of *the totality of the record* including applicants own

specification, and an analysis of whether the prior art would *perform equally as well* as

the claimed subject matter.

        A rejection based on design choice does not require that a reference expressly or

even impliedly teach the difference between the claims and the prior art.

Applicant provides the following in the Specification:
Business transactions are increasingly taking place over the Internet and other
electronic communication networks. Electronic markets may provide a forum for
such transactions, allowing buyers to locate sellers, and vice versa. This process
may involve a buyer (or seller) identifying one or more suitable offers to sell (or
buy) from one or more sellers (or buyers). **However, it may be difficult for a
buyer (or seller) to identify suitable offers to sell (or buy) from among the
offers available to the buyer (or seller) for a number of reasons.** For
example, there may be a relatively large amount of information for a buyer (or
seller) to consider when trying to identify suitable offers to sell. The market may

include a relatively large number of offers. Offers may include a number of variables, and there may be a relatively large number of possible values for each variable. **Additionally, there may be no available offers providing a substantial match with a particular order from the buyer (or seller). The buyer (or seller) may therefore have to determine which of the available offers provide a relatively close match with that order, taking into account a number of offer variables and possibly the relative priorities of such variables.**

Applicant' Specification, pg. 2 (10/02/01).

What is not made apparent from the record however, is how the particular visual patterns of the claimed invention resolves any problem, provides any advantage or is used for any purpose above and beyond what the visual patterns of the prior art can do equally well.

The visual patterns of Moshal perform equally well at identifying suitable offers to sell (or buy) for the offers available to the buyer (or seller); and enabling the buyer (or seller) to discern which offers prove the closest match to a particular order. That is, factors such as whether it is a offer, user request or order is distinguished; the price; the size; whether a user is a buyer or seller, the length of time a user has been in the marketplace; whether orders and offers are close to a match or consummating a transaction etc. are readily apparent from the visual pattern of Moshal. See Moshal, abstract, Figs. 1-18; [0001] – [0047]).

Examiner notes, whether presented as circles, bars, stars or any other visual pattern, the same problem could be resolved, the same advantage achieved, and purpose addressed. The fact that Applicant provides a pattern comprising a plurality of bars, each bar representing a particular offer variable is not the basis for a patentability determination. If that were the case, an infinite number of patents could be issued

representing the offer and the offer variables as lines, or arrows or any other symbol

and none would be any less obvious in light of Moshal.

See also In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975)

Nonfunctional Descriptive Material

Certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter. See MPEP § 2106.01.

Examiner notes that " generate within the display a pattern representing the user

request, the pattern for the user request comprising a plurality of bars, each bar

representing a particular offer variable and comprising a set of one or more geometric

display elements that by virtue of their appearance collectively encode, according to the

predefined encoding scheme, an entered value for the offer variable corresponding to

the bar." The visual pattern of the data does not provide a functional interrelationship,

and is considered to be non-functional descriptive material and not entitled to patentable

weight.

See also *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983).

Thus, based on any of the above rationales, It would have been obvious to one

of ordinary skill in the art at the time the invention was made to modify the teachings of

Moshal to provide a system/method/software embodied in computer-readable media for

providing visualization of market offers further comprising: generate within the display a

pattern representing the user request, the pattern for the user request comprising a

plurality of bars, each bar representing a particular offer variable and comprising a set of

one or more geometric display elements that by virtue of their appearance collectively

encode, according to the predefined encoding scheme, an entered value for the offer

variable corresponding to the bar.

As suggested by Moshal, users should have access to an easily understandable

version of a the current state of critical data and any objects other than objects other

than circles could be used to represent the buyers and sellers (and inherently, there

respective offers also). (Moshal, abstract, [0003] [0006] [0027]).

Re Claims 8,17 and 26: Moshal discloses system/method/software, wherein the

market server is further operable to:

receive a selection of a particular pattern associated with a particular offer (Moshal,

Figs. 1-18; [0006] [0024] [0026] [0027] [0028] [0029] [0030] [0031] [0032] [0033] [0034]

[0035] [0038] [0039] [0040] [0044] [0045] Inherent features);

receive an instruction to generate an order based on the values for the offer

associated with the selected pattern (Moshal, Figs. 1-18; [0006] [0024] [0026] [0027]

[0028] [0029] [0030] [0031] [0032] [0033] [0034] [0035] [0038] [0039] [0040] [0044]

[0045] Inherent features);

in response to receiving the instruction, automatically generate an order based

on the values for the offer associated with the selected pattern (Moshal, Figs. 1-18;

[0006] [0024] [0026] [0027] [0028] [0029] [0030] [0031] [0032] [0033] [0034] [0035]

[0038] [0039] [0040] [0044] [0045] Inherent features); and

communicate the generated order for matching with the selected offer (Moshal, Figs. 1-18; [0006] [0024] [0026] [0027] [0028] [0029] [0030] [0031] [0032] [0033] [0034] [0035] [0038] [0039] [0040] [0044] [0045] Inherent features).

Re Claims 9, 18 and 27: Moshal discloses a system/method/software, wherein the market server is further operable to display the values specified in the user request and the values specified in the offer associated with the selected pattern (Moshal, Figs. 1-18; [0006] [0024] [0026] [0027] [0028] [0029] [0030] [0031] [0032] [0033] [0034] [0035] [0038] [0039] [0040] [0044] [0045] Inherent features).

Re Claim 29:

Moshal discloses an electronic marketplace computer system for providing visualization of market offers, the system comprising:

a market server operable to (Moshal, [0006] [0044] [0045] [0046]):

receive offer data for a plurality of offers, the received offer data reflecting values specified in the offers for a plurality of offer variables (Moshal, abstract, [0006] [0025] [0026] [0027] [0040] [0042] [0044] [0045]); and

access a user request, the user request comprising a plurality of entered values for a plurality of offer variables (Moshal, abstract, [0006] [0025] [0026] [0027] [0040] [0042] [0044] [0045]); and

generate a display of the received offer data, the display comprising a plurality of patterns, each pattern representing a particular offer and particular offer variables and comprising a set of one or more geometric display elements that by virtue of their appearance collectively encode, according to a predefined encoding scheme, values for

the offer variables, the predefined encoding scheme being selected such that a set of

geometric display elements encoding a first value of a first offer variable in a first pattern

associated with a first offer are readily visually distinguishable from a set of geometric

display elements encoding a second value of the first offer variable in a second pattern

associated with a second offer if the first value is not substantially similar to the second

value (Moshal, Figs. 1-18; [0006] [0024] [0025] [0026] [0027] [0029] [0030] [0031]

[0033] [0034] [0035] [0039] [0040] [0041] [0044] [0045] plurality offers (e.g., bid/ask,

seller/buyer), plurality of offer variables (e.g., #items, type, user, price, length of

participation etc.)); and

generate within the display a pattern representing the user request, the pattern for the

user request comprising particular offer variables and comprising a set of one or more

geometric display elements that by virtue of their appearance collectively encode,

according to the predefined scheme, entered values for the offer variables, such that a

user may compare the pattern for the user request with the patterns for one or more

offers in connection with a market decision (Moshal, Figs. 1-18; [0006] [0024] [0025]

[0026] [0027] [0029] [0030] [0031] [0033] [0034] [0035] [0039] [0040] [0041] [0044]

[0045] (e.g., bid/ask, seller/buyer).

Moshal fails to explicitly disclose:

generate a display of the received offer data, the display comprising a plurality of

patterns, each pattern representing a particular offer and comprising a plurality of bars,

each bar representing a particular offer variable and comprising a set of one or more

geometric display elements that by virtue of their appearance collectively encode,

according to a predefined encoding scheme, a value for the offer variable corresponding
to the bar, the predefined encoding scheme is selected such that a set of geometric
display elements encoding a first value of a first offer variable in a first pattern
associated with a first offer are readily visually distinguishable from a set of geometric
display elements encoding a second value of the first offer variable in a second pattern
associated with a second offer if the first value is not substantially similar to the second
value; and

generate within the display a pattern representing the user request, the pattern for the
user request comprising a plurality of bars, each bar representing a particular offer
variable and comprising a set of one or more geometric display elements that by virtue
of their appearance collectively encode, according to the predefined encoding scheme,
an entered value for the offer variable corresponding to the bar.

Examiner Note: Thus, the <u>only</u> difference between Moshal and the claimed invention
is that the pattern comprises: a plurality of bars, each bar representing a particular offer
variable.

In light of Moshal, the claimed invention would have been obvious based on any
one of the following rationales:

<u>Official Notice</u>

Official Notice is taken that it was old and well-known at the time of the invention
to "generate a display of the received offer data, the display comprising a plurality of
patterns, each pattern representing a particular offer and comprising a plurality of bars,
each bar representing a particular offer variable and comprising a set of one or more

geometric display elements that by virtue of their appearance collectively encode,
according to a predefined encoding scheme, a value for the offer variable corresponding
to the bar, the predefined encoding scheme is selected such that a set of geometric
display elements encoding a first value of a first offer variable in a first pattern
associated with a first offer are readily visually distinguishable from a set of geometric
display elements encoding a second value of the first offer variable in a second pattern
associated with a second offer if the first value is not substantially similar to the second
value; and

generate within the display a pattern representing the user request, the pattern
for the user request comprising a plurality of bars, each bar representing a particular
offer variable and comprising a set of one or more geometric display elements that by
virtue of their appearance collectively encode, according to the predefined encoding
scheme, an entered value for the offer variable corresponding to the bar."

Examiner notes, that the display represents a user interface. It was old and well-
known at the time of the invention that a user interface provides for the presentation of
information to the users and the capture of their inputs.

Documentary Evidence:

"Microsoft Press Computer Dictionary Third Edition," editor: Kim Fryer. Copyright 1997
by Microsoft Corporation. Pg. 488;

Pearson Education. Copyright 2001 by Addison-Wesley. Pg. 11; and

Free On-line Dictionary of Computing. Copyright 1993-2007 Denis Howe.

Examiner further notes, that it was old and well-known at the time of the invention

to manipulate the presentation of the information in a variety of ways in accordance with

the preferences of a particular user. These presentations included the use of patterns

incorporating bars, columns, grids etc. For example, Excel programs have been used

frequently in reports, slide shows and presentations to show diagrams in the form of

bars, lines and other visual forms.

Documentary Evidence:

"Mastering Excel 4 For Windows," by Carl Townsend. Copyright 1992 by Sybex.

Chapter 20, pgs. 423-454.;

Levine, US Pub. No. 2002/0178105 - Fig. 6 ;

Lee, US Pub. No. 2002/0065762 - Figs. 5-14; [0030] [0056]; and

Russell, US Pat. No. 7,020,630 - Fig. 8

See also MPEP § 2144.03.

Design Choice

Design choice is a **conclusion** reached by the Examiner regarding the difference

between the claims and the prior art. This conclusion is based on a two prong test

involving an analysis of **the totality of the record** including applicants own

specification, and an analysis of whether the prior art would **perform equally as well** as

the claimed subject matter.

A rejection based on design choice does not require that a reference expressly or

even impliedly teach the difference between the claims and the prior art.

Applicant provides the following in the Specification:

Business transactions are increasingly taking place over the Internet and other
electronic communication networks. Electronic markets may provide a forum for
such transactions, allowing buyers to locate sellers, and vice versa. This process
may involve a buyer (or seller) identifying one or more suitable offers to sell (or
buy) from one or more sellers (or buyers). **However, it may be difficult for a
buyer (or seller) to identify suitable offers to sell (or buy) from among the
offers available to the buyer (or seller) for a number of reasons.** For
example, there may be a relatively large amount of information for a buyer (or
seller) to consider when trying to identify suitable offers to sell. The market may
include a relatively large number of offers. Offers may include a number of
variables, and there may be a relatively large number of possible values for each
variable. **Additionally, there may be no available offers providing a
substantial match with a particular order from the buyer (or seller). The
buyer (or seller) may therefore have to determine which of the available
offers provide a relatively close match with that order, taking into account a
number of offer variables and possibly the relative priorities of such
variables.**

Applicant' Specification, pg. 2 (10/02/01).

What is not made apparent from the record however, is how the particular visual

patterns of the claimed invention resolves any problem, provides any advantage or is

used for any purpose above and beyond what the visual patterns of the prior art can do

equally well.

The visual patterns of Moshal perform equally well at identifying suitable offers to

sell (or buy) for the offers available to the buyer (or seller); and enabling the buyer (or

seller) to discern which offers prove the closest match to a particular order. That is,

factors such as whether it is a offer, user request or order is distinguished; the price; the

size; whether a user is a buyer or seller, the length of time a user has been in the

marketplace; whether orders and offers are close to a match or consummating a

transaction etc. are readily apparent from the visual pattern of Moshal. See Moshal,

abstract, Figs. 1-18; [0001] – [0047]).

Examiner notes, whether presented as circles, bars, stars or any other visual pattern, the same problem could be resolved, the same advantage achieved, and purpose addressed. The fact that Applicant provides a pattern comprising a plurality of bars, each bar representing a particular offer variable is not the basis for a patentability determination. If that were the case, an infinite number of patents could be issued representing the offer and the offer variables as lines, or arrows or any other symbol and none would be any less obvious in light of Moshal.

See also In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975)

Nonfunctional Descriptive Material

> Certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter. See MPEP § 2106.01.

Examiner notes that " generate a display of the received offer data, the display comprising a plurality of patterns, each pattern representing a particular offer and comprising a plurality of bars, each bar representing a particular offer variable and comprising a set of one or more geometric display elements that by virtue of their appearance collectively encode, according to a predefined encoding scheme, a value for the offer variable corresponding to the bar, the predefined encoding scheme is selected such that a set of geometric display elements encoding a first value of a first offer variable in a first pattern associated with a first offer are readily visually distinguishable from a set of geometric display elements encoding a second value of the

first offer variable in a second pattern associated with a second offer if the first value is

not substantially similar to the second value; and

generate within the display a pattern representing the user request, the pattern

for the user request comprising a plurality of bars, each bar representing a particular

offer variable and comprising a set of one or more geometric display elements that by

virtue of their appearance collectively encode, according to the predefined encoding

scheme, an entered value for the offer variable corresponding to the bar." is interpreted

as a compilation or mere arrangement of data. The visual pattern of the data does not

provide a functional interrelationship, and is considered to be non-functional descriptive

material and not entitled to patentable weight.

See also In re Gulack, 217 USPQ 401 (Fed. Cir. 1983).

Thus, based on any of the above rationales, It would have been obvious to one

of ordinary skill in the art at the time the invention was made to modify the teachings of

Moshal to provide an electronic marketplace computer system for providing visualization

of market offers, the system comprising:

generate a display of the received offer data, the display comprising a plurality of

patterns, each pattern representing a particular offer and comprising a plurality of bars,

each bar representing a particular offer variable and comprising a set of one or more

geometric display elements that by virtue of their appearance collectively encode,

according to a predefined encoding scheme, a value for the offer variable corresponding

to the bar, the predefined encoding scheme is selected such that a set of geometric

display elements encoding a first value of a first offer variable in a first pattern

associated with a first offer are readily visually distinguishable from a set of geometric

display elements encoding a second value of the first offer variable in a second pattern

associated with a second offer if the first value is not substantially similar to the second

value; and

generate within the display a pattern representing the user request, the pattern for the

user request comprising a plurality of bars, each bar representing a particular offer

variable and comprising a set of one or more geometric display elements that by virtue

of their appearance collectively encode, according to the predefined encoding scheme,

an entered value for the offer variable corresponding to the bar.

As suggested by Moshal, users should have access to an easily understandable

version of a the current state of critical data and any objects other than objects other

than circles could be used to represent the buyers and sellers (and inherently, there

respective offers also). (Moshal, abstract, [0003] [0006] [0027]).

Claims 4,13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Moshal as applied to claims 1,10 and 19 above, and further in view of Reamer, US

Pub. No. 2002/0194104.

Re Claims 4,13 and 22: Moshal fails to explicitly disclose system/method/software,

wherein a user is a buyer and the offers comprise asks only from sellers on an

approved vendor list (AVL). Official Notice is taken that it is old and well-known for

buyers and sellers to limit their business transactions to preferred parties. Specifically,

it was old and well known to provide wherein a user is a buyer and the offers comprise

asks only from sellers on an approved vendor list (AVL). For example, preferred lists are

used in auctions, shopping, online transactions etc. (Reamer, abstract; [0016] [0018]

[0021]; claims 2,3).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify the teachings of Moshal by adopting the teachings of

Reamer to provide system/method/software, wherein the user is a buyer and the offers

comprise asks only from sellers on an approved vendor list (AVL).

One would have been motivated to avoid fraud, maintain business related and

facilitate a more efficient experience.

Response to Arguments

Applicant's arguments filed have been fully considered but they are not

persuasive..

Information Disclosure Statement
It is unclear what reference has been submitted that the applicant would like to

have considered.

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The premise of the rejection given is drawn to two concepts:

The claims are to be given their broadest reasonable interpretation and thus not all

language in the claims are entitled to patentable weight. See discussion supra. See

MPEP § 2111, 2106.; and

The claimed invention is obvious in light of Moshal because the rationales of Official

Notice, Design Choice and Nonfunctional descriptive material. See discussion supra.

Documentary evidence of the Official Notice taken is on the record, and

corresponding bibliographic information can be found supra and in prior Office Actions.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

As discussed supra the knowledge generally available to one of ordinary skill in the art was such that the claimed invention would have been obvious in light of Moshal.

Furthermore, as suggested by Moshal, users would have been motivated to have access to an easily understandable version of a the current state of critical data and any objects other than circles could be used to represent the buyers and sellers (and inherently, there respective requests/offers also). (Moshal, abstract, [0003] [0006] [0027]). Examiner notes, that Moshal provides that there is a need to provide data pertaining to an electronic marketplace in a format that is easy to understand. Thus, Moshal provides for the representation of the various players in the marketplace (i.e., buyers/sellers) and the attributes of their requests/offers in visual pattern. Moshal goes on to suggest that visual patterns other than those disclosed in Moshal could also be used to represent the buyers/sellers (and inherently their respective requests/offers also).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

any judgment on obviousness is in a sense necessarily a reconstruction based upon

hindsight reasoning. But so long as it takes into account only knowledge which was

within the level of ordinary skill at the time the claimed invention was made, and does

, not include knowledge gleaned only from the applicant's disclosure, such a

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

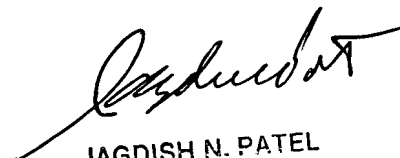than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Sara Chandler whose telephone number is 571-272-

1186. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, James Kramer can be reached on 571-272-6783. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC

JAGDISH N. PATEL
PRIMARY EXAMINER